
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of Closed Captioning and Video)
Description of Video Programming)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
Video Programming Accessibility)

MM Docket No. 95-176

**REPLY COMMENTS OF BELL SOUTH CORPORATION,
BELL SOUTH INTERACTIVE MEDIA SERVICES, INC. AND
BELL SOUTH WIRELESS CABLE, INC.**

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BELL SOUTH WIRELESS CABLE, INC.**

BellSouth Corporation and its subsidiaries BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc. (collectively referred to herein as "BellSouth"), by its attorneys, hereby submits its reply comments with respect to the *Notice of Proposed Rulemaking* ("NPRM") issued in the above-captioned proceeding.¹⁷

I. EXECUTIVE SUMMARY.

There is nearly universal agreement in this proceeding that it is most sensible to insert closed captioning at the time of program production and distribute the programming with captions, and not to have multichannel video programming distributors ("MVPDs") caption programming just before it is delivered to the subscriber. Logically, then, a substantial number

¹⁷ FCC 97-4 (rel. January 17, 1997).

of parties have asked the Commission to impose the legal obligation for captioning on the entity closest to the production process, *i.e.*, the program owner or, alternatively, the program producer.

Notwithstanding the objections of certain parties who wish to impose the obligation on MVPDs under the pretext that the MVPD is the “final link” to the subscriber, the record clearly reflects that MVPDs are very poorly equipped to remedy any shortfalls in captioned programming, since they are not in a position to caption programming themselves or force program suppliers to supply the required captioning for them. As a result, program owners, the “first link” in the distribution chain to the subscriber, should remain the focus of the Commission’s enforcement efforts in this area.

BellSouth also submits that the Commission must adopt rules that allow program owners and MVPDs sufficient time to transition from a voluntary to a mandatory captioning environment and that otherwise minimize the economic, technical and logistical burdens of captioning. Specifically, BellSouth recommends that the Commission:

- adopt a ten-year transition period for compliance and accept no captioning complaints for the first three years thereof;
- apply a “de minimis” exception to its captioning benchmarks that excludes program owners who have tried to comply with the Commission’s Rules in good faith;
- calculate compliance with the captioning benchmarks on a channel-by-channel basis rather than on a total channel lineup or system wide basis;
- require subscribers to give prior written notice of potential captioning complaints to facilitate informal resolution of disputes;

- apply the statutory exception for existing contracts to all contracts that do not require the program supplier to provide captions or which do not specifically authorize or require the MVPD to caption or modify program content in any respect;
- mandate that all captioning complaints regarding television broadcast programming be directed in all cases to television broadcast stations; and
- declare that any case-by-case exemptions from the closed captioning rules will apply automatically to all MVPDs which carry the exempted programming.

Finally, BellSouth notes that there is substantial evidence in the record supporting blanket exemptions for ITFS, PEG access and local origination programming. For the reasons set forth herein, however, BellSouth strongly opposes any suggestion that the Commission's closed captioning rules should be applied to Internet services.

II. ANY ENFORCEMENT MECHANISM ADOPTED BY THE COMMISSION IN THIS PROCEEDING MUST IMPOSE THE OBLIGATION FOR CAPTIONING ON PROGRAM OWNERS, NOT MVPDS.

Congress and the Commission have already agreed that it is more economical and efficient to insert closed captioning into video programming at the production stage and distribute it with captions than to have each MVPD add the captions just before the programming is delivered to subscribers.^{2/} A substantial number of commenting parties in this proceeding have taken the same view, and thus have urged the Commission to take the next logical step and impose captioning obligations on the entity closest to the production process, *i.e.*, the program

^{2/} H.R. Rep. 104-204, 104th Cong., 1st Sess. at 114 (1995) ("House Report"); *NPRM* at ¶ 6.

owner or, alternatively, the program producer.^{3/} Nonetheless, a few parties have insisted that the Commission should impose the captioning obligation on MVPDs, notwithstanding the fact that MVPDs generally do not produce *any* programming and otherwise have nothing whatsoever to do with the captioning process.^{4/} For the reasons set forth below, BellSouth respectfully disagrees.

^{3/} See, e.g., Comments of The Wireless Cable Association International, Inc., MM Docket No. 95-176, at 3-6 (filed Feb. 28, 1997) [the "WCA Comments"]; Comments of BellSouth Corporation *et al.*, MM Docket No. 95-176, at 7-14 (filed Feb. 28, 1997) [the "BellSouth Comments"]; Comments of Cox Enterprises, Inc., MM Docket No. 95-176, at 3-8 (filed Feb. 28, 1997); Comments of the National Association of Broadcasters, MM Docket No. 95-176, at 1-3 (filed Feb. 28, 1997) [the "NAB Comments"]; Comments of Primestar Partners, L.P., MM Docket No. 95-176, at 3-4 (filed Feb. 28, 1997) [the "Primestar Comments"]; Comments of Satellite Distributors Cooperative, MM Docket No. 95-176, at 2-3 (filed Feb. 28, 1997) [the "SDC Comments"]; Comments of United Video Satellite Group, MM Docket No. 95-176, at 2-4 (filed Feb. 28, 1997) [the "United Video Comments"]; Comments of DIRECTV, Inc., MM Docket No. 95-176, at 3-6 (filed Feb. 28, 1997); Comments of AlphaStar Television Network, MM Docket No. 95-176, at 5-9 (filed Feb. 28, 1997); Comments of Ameritech New Media, MM Docket No. 95-176, at 5-6 (filed Feb. 28, 1997) [the "Ameritech Comments"]; Comments of Paxson Communications Corporation, MM Docket No. 95-176, at 3-5 (filed Feb. 28, 1997) [the "Paxson Comments"]; Comments of SBC Communications *et al.*, MM Docket No. 95-176, at 2-3 (filed Feb. 28, 1997) [the "SBC Comments"]; Comments of United States Satellite Broadcasting Company, Inc., MM Docket No. 95-176, at 5-8 (filed Feb. 28, 1997) [the "USSB Comments"]; Comments of U S WEST, Inc., MM Docket No. 95-176, at 9-12 (filed Feb. 28, 1997) [the "US WEST Comments"]].

^{4/} See, e.g., Comments of the Motion Picture Association of America, MM Docket No. 95-176, at 2-6 (filed Feb. 28, 1997); Comments of WGBH Educational Foundation, MM Docket No. 95-176, at 3 (filed Feb. 28, 1997); Comments of Consumer Action Network, MM Docket No. 95-176, at 2-3 (filed Feb. 28, 1997); Comments of the League for the Hard of Hearing, MM Docket No. 95-176, at 3 (filed Feb. 28, 1997); Comments of the National Association of the Deaf, MM Docket No. 95-176, at 2-3 (filed Feb. 28, 1997) [the "NAD Comments"]].

At the outset BellSouth wishes to reemphasize that the plain language of the 1996 Telecom Act clearly provides the Commission with the necessary jurisdiction to impose captioning obligations on program owners. With respect to new programming, the statute authorizes the Commission to exempt by regulation programs, classes of programs or services where the provision of closed captioning would be economically burdensome to the “provider *or owner* of such programming.”^{5/} Similarly, Congress authorized the Commission to ensure that video programming providers *or owners* maximize the availability of library programming.^{6/} Moreover, the statute’s provisions regarding preexisting contracts and case-by-case exemptions from the Commission’s closed captioning rules apply to providers and program owners.^{7/} Congress’ repeated use of the term “owner” was not accidental; rather, it arose directly from Congress’ observation that it is most sensible to have programming captioned at the time of production by those entities most familiar with the program’s content, *prior to distribution by MVPDs*.^{8/} The unambiguous language of the statute and its legislative history put to rest any suggestion that the Commission cannot exercise jurisdiction over program owners in this proceeding.

^{5/} 47 U.S.C. § 613(d)(1) (emphasis added).

^{6/} 47 U.S.C. § 613(b)(2).

^{7/} 47 U.S.C. § 613(d)(2)-(3).

^{8/} House Report at 114.

Moreover, any mechanism for enforcing the Commission's closed captioning rules will not be effective unless the party against whom the rules are being enforced is in a position to remedy an alleged rule violation. The record in this proceeding establishes that MVPDs have no role in the captioning process and that it makes no technological or economic sense to require MVPDs to caption video programming. In addition, a number of commenting parties have noted that MVPD-added captioning raises serious copyright problems which may expose MVPDs to substantial statutory penalties for infringement.^{9/} In other words, the record reflects what Congress and the Commission have already recognized, *i.e.*, that MVPDs are very poorly suited to the task of captioning any programming that does not comply with the Commission's closed captioning rules.

Furthermore, the record substantially undercuts the Commission's theory that MVPDs can ensure compliance with the Commission's rules through private negotiations with program suppliers. Indeed, there is a significant amount of evidence in this proceeding as to the considerable economic and technical burdens associated with captioning cable network programming. For example, the National Cable Television Association has stated that captioning all basic cable programming alone could cost anywhere from \$500-\$900 million per year and, as reflected in the comments submitted by newer programming services such as the Television Food Network, the Game Show Channel, and Outdoor Life *et al.*, the financial burden of

^{9/} See, *e.g.*, USSB Comments at 1-3; United Video Comments at 3-4; Comments of Bell Atlantic and NYNEX, MM Docket No. 95-176, at 5-6 (filed Feb.28, 1997).

captioning will be especially severe on start-up, "low penetration" cable networks which have smaller distribution than the television broadcast networks and the more entrenched cable programming services.^{10/} Furthermore, as demonstrated in the comments filed by highly specialized "niche" services such as the Home Shopping Network, Prevue Networks, C-SPAN, and the Weather Channel, captioning often is technically and/or logistically impractical for programmers who do not rely on full-length, prerecorded entertainment programs for content.^{11/} No amount of negotiation between MVPDs and programmers can change these basic marketplace realities. Accordingly, the Commission should not assume that program suppliers will ease the burden of compliance on MVPDs by negotiating to supply captioned programming in all or even most cases.

^{10/} See, Comments of the National Cable Television Association, MM Docket No. 95-176, at 5-9 (filed Feb. 28, 1997); Comments of the Television Food Network, MM Docket No. 95-176, at 2-3 (filed Feb. 28, 1997); Comments of The Game Show Network, MM Docket No. 95-176, at 2-8 (filed Feb. 28, 1997); Comments of Outdoor Life Network *et al.*, MM Docket No. 95-176, at 9-16 (filed Feb. 28, 1997); Comments of the A&E Television Networks *et al.*, MM Docket No. 95-176, 10-15 (filed Feb. 28, 1997). Comments submitted by the motion picture industry also suggest that financial and technical considerations may preclude captioning of certain types of feature films. Comments of Independent Video & Filmmakers, Redeemable Features and First Run Features, MM Docket No. 95-176, at 1-2 (filed Feb. 28, 1997).

^{11/} See, e.g., Comments of HSN, Inc., MM Docket No. 95-176, at 4-9 (filed Feb. 28, 1997); Comments of Prevue Networks, MM Docket No. 95-176, at 3-8 (filed Feb. 28, 1997); Comments of C-SPAN, MM Docket No. 95-176, at 2-6 (filed Feb. 28, 1997); Comments of The Weather Channel, MM Docket No. 95-176, at 3-9 (filed Feb. 28, 1997); Comments of Access Television Network, MM Docket No. 95-176, at 3-5 (filed Feb. 28, 1997); Comments of E! Entertainment Television, Inc., MM Docket No. 95-176, at 2-3 (filed Feb. 28, 1997).

In addition, comments submitted by MVPDs and programmers alike reflect that in today's competitive marketplace it is unrealistic to expect that MVPDs will ignore the demands of their subscribers and take the extreme measure of threatening programmers with noncarriage if they do not comply with the Commission's closed captioning rules.^{12/} The record also reflects that even if an MVPD were to have the necessary leverage to require a program supplier to supply captioning as a condition of carriage, an MVPD cannot force the supplier to provide captioning where the supplier is not already contractually obligated to do so or where an existing contract does not specifically authorize or require the MVPD to caption or modify program content in any respect.^{13/} BellSouth submits that there is no basis in the record nor any Commission precedent that would justify any requirement that MVPDs renegotiate existing programming contracts require to program suppliers to comply with the Commission's closed captioning rules. Finally, as BellSouth has already pointed out in its initial comments, noncarriage is not an option with respect to must-carry channels and PEG channels mandated by local franchising authorities.^{14/}

^{12/} See, e.g., Comments of Encore Media Corporation, MM Docket No. 95-176, at 5-7 (filed Feb. 28, 1997) [the "Encore Comments"]; WCA Comments at 6-7; SDC Comments at 2-5; Ameritech Comments at 7; SBC Comments at 3-4.

^{13/} Encore Comments at 6, 14-17. See also, WCA Comments at 7; Primestar Comments at 3-4; SDC Comments at 3-6; WCA Comments at 6-11; Ameritech Comments at 10; USSB Comments at 10-14.

^{14/} BellSouth Comments at 4-14.

In sum, the record reflects that MVPDs simply are not the appropriate focal point for enforcement of the Commission's closed captioning rules, since they are not in a position to caption programming themselves or indirectly impose the captioning obligation on program suppliers through private negotiation or explicit threats of noncarriage, particularly where existing contractual or regulatory obligations require programming to be carried whether it is captioned or not. Furthermore, the Commission cannot in fairness to subscribers require MVPDs to drop noncaptioned programming until the program owner supplies the required captions. Thus, BellSouth once again submits that the best way to ensure effective enforcement of the Commission's closed captioning rules is to impose legal responsibility for captioning on the program owner, which is the entity encompassed by the 1996 Telecom Act that is most familiar with the economic, technical and editorial issues associated with captioning and is best positioned to remedy any violations of the Commission's captioning rules.

III. THE COMMISSION SHOULD ADOPT TRANSITION AND OTHER ENFORCEMENT RULES WHICH MINIMIZE THE ECONOMIC, TECHNOLOGICAL AND LOGISTICAL BURDENS OF CAPTIONING ON PROGRAM OWNERS AND MVPDS.

Over the past twenty years captioned programming has been provided through the voluntary efforts of program producers and providers, and as a result of these efforts producers are captioning significant amounts of nationally distributed programming and some local or regional programming.^{15/} Funding provided by the Department of Education represents

^{15/} *NPRM* at ¶¶ 10-12.

approximately 40% of the cost of all captioned video programming; however, DOE funding is available only for programming that reaches large audiences.^{16/} The remaining support comes from a combination of directly credited corporate advertising support, charitable and foundation support and producers and distributors.^{17/} By shifting to a mandatory as opposed to a voluntary captioning system no later than the August 8, 1997 deadline imposed by Congress, the Commission will be requiring that programming be captioned as a matter of law even though the economic and technical resources which the market currently devotes to captioning will not have changed to any significant extent. BellSouth thus submits that any transition or other enforcement rules adopted in this proceeding must be crafted to give program owners and MVPDs sufficient time to adjust to the new regulatory regime in a manner which increases the level of captioned programming over a reasonable period of time, without imposing undue economic burdens or interfering with the marketplace and technological forces which have increased the overall level of captioned programming *without* Commission oversight.^{18/}

^{16/} *Id.* at ¶10.

^{17/} *Id.*

^{18/} *See, e.g.,* A&E Comments at 20 (“The Act and the Commission’s Notice both indicate that the timetable for compliance must be realistic in light of the marketplace and existing obligations. The current amount of captioning transmitted by broadcasting networks developed over a far longer period, was implemented generally with far greater resources operating in a very different market, and was supported to a large degree by government assistance.”); Comments of Home Box Office, Inc., MM Docket No. 95-176, at 12-13 (“[T]he Commission should not create an artificial deadline for the captioning of particular types of programming. Marketplace forces have proven to be a significant motivator to the provision of closed captioning, and they will continue to be.”); E! Comments at 3 (“Apart from the considerable

Accordingly, as recommended by a number of programmers and MVPDs in this proceeding, the Commission should adopt the ten-year "phase-in" period proposed in the *NPRM*, which under the Commission's proposal would require that 25% of all new, non-exempt video programming be captioned after three years, 50% after five years, 75% after seven years, and 100% after ten years. However, given that a broad variety of programmers have provided substantial evidence as to why it is difficult to caption all video programming according to a fixed captioning "quota," the Commission should allow for a "de minimis" exception at each captioning benchmark that will exclude program owners who have made a good faith effort to caption as much of their programming as possible. Also, the Commission should not accept any captioning complaints from subscribers during the first three years of the transition period, since no "minimum" captioning benchmark will be in force during that time.

Further, to ensure that cable overbuilders, wireless cable systems and other alternative MVPDs have full access to popular cable network programming, the Commission should apply its benchmarks on a channel-by-channel basis rather than to an entire multichannel system as a whole. Even incumbent cable operators are concerned that a systemwide measurement will enable programmers to manipulate the Commission's captioning rules to their advantage. As noted by U S WEST:

financial burden that captioning will impose, there remain a number of practical difficulties. . . In addition, technological breakthroughs may occur during the transition period, making new devices available to facilitate the captioning process.").

[T]o apply the captioning measurement system wide or on an aggregate channel basis could potentially distort negotiations between program producers and distributors. Particularly if the Commission decides to make the distributor responsible for compliance, it places an additional and potentially thorny issue on the negotiation table -- namely the percentage of closed captioning offered. In an extreme case such a rule might incent a stronger program producer to delay captioning, under the theory that the distributor will be forced to find other programmers to pick up the slack left by the non-captioning service.^{19/}

Clearly, the concerns enunciated by U S WEST apply with even greater force to alternative MVPDs which cannot offer a competitive multichannel service without unimpeded access to popular cable network programming, whether it is captioned or not.

Moreover, regardless of where the Commission chooses to impose the legal obligation for captioning, the Commission's complaint process should require that a subscriber first provide written notice to the program owner or MVPD and allow a reasonable period of time (*e.g.*, sixty days) within which to either bring the programming into compliance with the rule or indicate to the subscriber why the programming in question does not have to be captioned under the Commission's Rules. The concept of a prior notice period is well established in the Commission's cable rules and serves the very useful function of allowing the parties to resolve potential complaints informally without straining the Commission's already overextended resources.^{20/} Furthermore, to prevent "shotgun" complaints directed at programs that are

^{19/} U S WEST Comments at 15.

^{20/} *See, e.g.*, 47 C.F.R. § 76.61 (requiring television broadcast stations to give cable systems thirty days prior notice of potential must-carry complaints).

uncaptioned in isolated instances for reasons beyond the program owner's or the MVPD's control, the Commission should require that any closed captioning complaint be based on the program owner's or MVPD's programming exhibited over a period of no less than one month.

Comments submitted by various parties also reflect that the Commission should amend its proposed "existing contracts" exception to encompass all contracts that either do not require the program supplier to provide captioning or which do not authorize or require the MVPD to caption or modify program content in any manner. As indicated in the comments submitted by Encore Media, a substantial number of programming contracts are structured in this fashion, and thus limiting the exception only to those contracts which affirmatively prohibit captioning will require programmers and MVPDs to renegotiate long standing contractual arrangements to incorporate compliance with the Commission's closed captioning rules. Congress did not intend to disrupt the marketplace in this manner, and the Commission should therefore modify its proposed rule accordingly.

In addition, in light of the fact that a substantial amount of subscriber viewing still is directed toward television broadcast stations, and that under Commission regulations MVPDs usually must carry television broadcast signals "as is," BellSouth submits that all complaints regarding captioning of television broadcast programming carried by an MVPD must be directed to the television station in question. If notwithstanding the record the Commission imposes the legal obligation for captioning on MVPDs rather than program owners, then under no circumstances should the Commission adopt NAB's request that all MVPDs be required to carry

television broadcast signals whose programming is used to satisfy the MVPD's captioning quota.^{21/} The Commission has no authority under the 1996 Telecom Act to use its closed captioning rulemaking as a "backdoor" mechanism for revisiting the must-carry issue; to the extent that NAB believes that all MVPDs should be required to carry local broadcast stations, they should take up the matter in a separate petition for rulemaking.

Finally, to minimize the paperwork burden on the Commission's staff and lend some certainty to the Commission's closed captioning rules, the Commission should declare that any "case-by-case" exemptions issued pursuant to Section 713(d)(3) of the 1996 Telecom Act will apply automatically to all MVPDs that carry the subject programming. Otherwise, the Commission will be at risk of receiving hundreds of complaints about the same program where it has already determined that the program does not have to be captioned.

IV. THE RECORD IN THIS PROCEEDING SUPPORTS BLANKET EXEMPTIONS FOR ITFS, PEG ACCESS AND LOCAL ORIGINATION PROGRAMMING.

In its initial comments BellSouth noted that ITFS licensees do not properly fall within the Commission's definition of "video programming provider" and thus should be accorded a blanket exemption for all ITFS programming delivered over their facilities to ITFS receive sites.^{22/} BellSouth also noted that a similar exemption for ITFS programming delivered by wireless cable operators into subscriber homes is necessary to maximize ITFS distribution and

^{21/} NAB Comments at 6-7.

^{22/} BellSouth Comments at 16-17.

preserve the critical relationship between the wireless cable industry and ITFS licensees. The strong support among ITFS licensees for these positions (both in their individual comments and in the comments of The Wireless Cable Association International, Inc.) should be accorded considerable weight by the Commission, since ITFS licensees are most knowledgeable about their own economic circumstances, the nature of their ITFS service and whether there is even a need for ITFS programming to be captioned.^{23/} Moreover, the comments of the ITFS licensees demonstrate that a blanket exemption for ITFS programming is appropriate regardless of whether the Commission imposes the captioning obligation on video programming providers or program owners/producers. Accordingly, BellSouth submits that the Commission will best serve the needs of ITFS licensees and the hearing-impaired community by allowing ITFS programming to be captioned on a case-by-case basis where a local educator or school board determines that such captioning is necessary to accommodate hearing-impaired students.

BellSouth further notes that the record includes similarly strong support among community access centers and local governments for a blanket PEG access exemption.^{24/} These

^{23/} See, e.g., Comments of the Archdiocese of Los Angeles Education and Welfare Corporation *et al.*, MM Docket No. 95-176, at 2-7 (filed Feb. 28, 1997); Joint Comments of Higher Education Parties, MM Docket No. 95-176, at 4-5 (filed Feb. 28, 1997); Comments of The Catholic Television Network, MM Docket No. 95-176, at 4-8 (filed Feb. 28, 1997); Comments of Indiana Higher Education Telecommunications System, MM Docket No. 95-176, 5-7 (filed Feb. 28, 1997); Comments of the ITFS Parties, MM Docket No. 95-176, at 2-8 (filed Feb. 28, 1997); WCA Comments at 12-14.

^{24/} See, e.g., Comments of Evanston Community Media Center, MM Docket No. 95-176, at 1 (filed Feb. 19, 1997); Comments of City of Grant, MM Docket No. 95-176, at 1-4 (filed Feb. 14, 1997); Comments of City of Kansas City, Missouri, MM Docket No. 95-176, at 1-5

commenting parties have presented compelling evidence indicating that the financial burden of captioning on community program producers and local governments would be unmanageable and would therefore put valuable community-based programming at risk. For example, the Alliance for Community Media notes that PEG access centers produce a large amount of original programming but have relatively small budgets. As a result, imposing a captioning requirement on PEG access programming would leave many PEG access centers with little money to pay salaries, utility bills and other operational expenses.^{25/} In another example, the City of Kansas City notes that mandatory captioning of government meetings in the near term would cost nearly \$50,000, *i.e.*, more than 10% of the entire budget for the Office of City Communications. When all government committee meetings are cablecast, the estimated annual costs of captioning increases to \$83,200, *i.e.*, almost 13% of the entire requested budget of the Office of City Communications for the next fiscal year. Accordingly, to closed caption just the City Council and committee meetings would require the elimination of significant government access

(filed Feb. 28, 1997) [the "Kansas City Comments"]; Comments of Chicago Access Corporation, MM Docket No. 95-176, at 1 (filed Feb. 28, 1997); Comments of the Southwest Suburban Cable Commission, MM Docket No. 95-176, at 2-7 (filed Feb. 28, 1997); Comments of Community Television Network - Ann Arbor, Michigan, MM Docket No. 95-176, at 1-2 (filed Feb. 28, 1997); Comments of the Greater Metro Telecommunications Consortium, MM Docket No. 95-176, at 4-12 (filed Feb. 28, 1997); Comments of the City of Pittsburgh, MM Docket No. 95-176, at 1 (filed Feb. 25, 1997); Comments of Cincinnati Community Video, MM Docket No. 95-176, at 1-2 (filed Feb. 25, 1997); Comments of Tualatin Valley Community Access, MM Docket No. 95-176, at 1-2 (filed Feb. 27, 1997); Comments of the Alliance for Community Media, MM Docket No. 95-176, at 6-7 (filed Feb. 27, 1997) [the "ACM Comments"].

^{25/} ACM Comments at 4-6.

programming, a result clearly not in the public interest.^{26/}

Finally, BellSouth supports an exemption for local origination programming as requested by the National Cable Television Association, Time Warner Cable and U S WEST.^{27/} Local origination channels offer unique local news and entertainment programming but have a relatively small subscriber base over which to amortize very high equipment and labor costs associated with captioning.^{28/} The economic burden of captioning on local origination channels thus is extremely disproportionate when compared with, for example, that of local television network stations and nationally distributed cable networks.^{29/} Accordingly, local origination programming represents precisely the type of “narrowcasting” service which Congress intended to be included in the Commission’s categorical exemptions from its closed captioning rules.

^{26/} Kansas City Comments at 3-4.

^{27/} NCTA Comments at 18-26; Comments of Time Warner Cable, MM Docket No. 95-176, at 4-10 (filed Feb. 28, 1997) [the “Time Warner Comments”]; U S WEST Comments at 3-9.

^{28/} Time Warner notes, for example, that equipment and software costs may total from \$12,000 to \$50,000 per system, and that some of these costs are repeated for every separate headend. Time Warner Comments at 5. In addition, Time Warner points out that for a 24 hour local origination news service, mandatory captioning would require that the service hire, at a minimum, nine additional full-time employees. *Id.* at 6. Because breaking news can occur at any time, a 24 hour news service would need to have at least two highly proficient stenocaptioners available at all times. Time Warner estimates that these costs could total approximately \$500,000 per year. *Id.* at 6-7.

^{29/} The comments submitted by U S WEST also demonstrate that the costs of captioning for local origination channels would be prohibitive. U S WEST Comments at 3-9.

V. THE COMMISSION SHOULD NOT IMPOSE ITS CLOSED CAPTIONING REQUIREMENTS ON INTERNET SERVICES PROVIDED BY MVPDS.

A very small number of parties in this proceeding have suggested that the Commission should apply its closed captioning rules to Internet services.^{30/} There is no legal or public policy basis for the Commission to take such action. The Commission has yet to exercise jurisdiction over Internet services, and nothing in the closed captioning provisions or legislative history of the 1996 Telecom Act authorizes the Commission to do so or even suggests that closed captioning of Internet services would serve the public interest. Indeed, the Communications Act of 1934, as amended, defines “video programming” as “programming provided by, or *generally considered comparable to programming provided by*, a television broadcast station.”^{31/} Internet services use two-way high speed data transmissions via copper/fiber optic wires or, more recently, microwave services to provide subscribers (as opposed to the general public) on-demand access to an infinite library of visual, textual and audio material unavailable via one-way transmission of off-air signals via television broadcast frequencies. As such, the information available over the Internet is not “comparable” to television broadcast programming.

In any event, as a practical matter it makes absolutely no sense to require MVPDs to caption material delivered over the Internet. Excluding situations where an MVPD operates its own “home page” (which usually consists of textual and graphic material that is fully accessible

^{30/} See NAD Comments at 3; Comments of KALEIDOSCOPE Television, MM Docket No. 95-176, at 2-6 (filed Feb. 28, 1997).

^{31/} 47 U.S.C. § 522(20) (emphasis added).

to hearing-impaired users), an MVPD which provides Internet access service has no control whatsoever of the vast amount of information delivered through the Internet and has no means to ensure that Internet material is captioned. Moreover, given the substantial economic, technical and logistical obstacles to captioning material in the far more limited domain of "video programming," any requirement that MVPDs caption unquantifiable streams of Internet material would be a death knell to the new high-speed Internet access services which the cable and wireless cable industries are about to introduce to the public. There is no evidence that Congress intended to effect such a result.

WHEREFORE, for the reasons set forth above, BellSouth requests that the Commission adopt closed captioning rules in accordance with these reply comments and BellSouth's initial comments in this proceeding.

Respectfully submitted,

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